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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,479	03/01/2004	Darrell Reginald May	85002	9515
27975	7590	10/28/2005	EXAMINER	
ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST P.A. 1401 CITRUS CENTER 255 SOUTH ORANGE AVENUE P.O. BOX 3791 ORLANDO, FL 32802-3791			RAMPURIA, SHARAD K	
			ART UNIT	PAPER NUMBER
			2688	

DATE MAILED: 10/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/790,479

Applicant(s)

MAY ET AL.

Examiner

Sharad Rampuria

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

I. The current office-action is in response to the application filed on 3/1/04.

Accordingly, Claims 1-23 are pending for examination as follows:

Double Patenting

II. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-23 provisionally rejected under the judicially created doctrine of double patenting over claims 1, 4-7, 10-13, 16-19, 21, 24-27, 30-32 of copending Application No. 10/790,641. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

III. Claim 1-23 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-32 of copending U.S. Application No. 10/790,641.

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Although the conflicting claims are not identical, but they are not patentably distinct from each other because all of the claimed limitations of the present U.S. Application No. 10/790,479, for example, Claim 1 is explained in following table, are transparently found in copending U.S. Application No. 10/790,641 with obvious wording variations.

<i>Instant Claim of U.S. Application No. 10/790,479</i>	<i>Related Claim of copending U.S. Application No. 10/790,641</i>
1. A mobile wireless communications device comprising: a wireless transceiver and a controller for cooperating therewith for receiving text messages from a wireless communications network; and a headset output connected to said controller;	1. A mobile wireless communications device comprising: a wireless transceiver and a controller cooperating therewith for receiving text messages from a wireless communications network, said controller being switchable between a normal message mode and an audio message mode; a user interface device connected to said controller for receiving at least one audio mode filter parameter from a user; and an audio output connected to said controller; said controller, when in the audio message mode, selecting received text messages based upon the at least one audio mode filter parameter, and outputting audio messages comprising speech

<p>said controller for switching between a normal message mode and an audio message mode based upon a connection between said headset output and a headset, and when in the audio message mode, outputting at least one audio message comprising speech generated from at least one of the received text messages via said headset output.</p>	<p>generated from the selected text messages via said audio output.</p> <p>3. The mobile wireless communications device of claim 2 wherein said controller switches between the normal message mode and the audio message mode based upon a connection between said headset output and a headset.</p>
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Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 102

IV. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7, 9-14, and 16-23 are rejected under 35 U.S.C. 102 (e) as being anticipated by Sakayori et al. [US 20030218642]

As per claims 1, 16 Sakayori disclose:

A mobile wireless communications device (Abstract) comprising:

A wireless transceiver and a controller for cooperating therewith for receiving text messages from a wireless communications network; (0041; Pg.3 and 0265; Pg.17) and

A headset output connected to said controller; (109; Fig.1, 0041; Pg.3)

Said controller for switching between a normal message mode and an audio message mode based upon a connection between said headset output and a headset, and when in the audio message mode, outputting at least one audio message comprising speech generated from at least one of the received text messages via said headset output. (0022; Pg.2, 0214-0215; Pg.14)

As per claims 2, 17 Sakayori disclose:

The mobile wireless communications device of claims 1 and 16 respectively, wherein said headset output comprises a wireless headset output for establishing a wireless connection with the headset. (109; Fig.1, 0041; Pg.3)

As per claim 3 Sakayori disclose:

The mobile wireless communications device of claim 1 wherein said headset output comprises a headset jack for a wired headset. (109; Fig.1, 0041; Pg.3)

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As per claims 4, 18 Sakayori disclose:

The mobile wireless communications device of claims 1 and 16 respectively, further comprising a user interface device connected to said controller, and wherein said controller switches to the audio message mode based upon an audio message mode command provided by a user via said user interface device. (0022; Pg.2, 0214-0215; Pg.14)

As per claim 5 Sakayori disclose:

The mobile wireless communications device of claim 4 wherein said user interface device comprises a keypad connected to said controller. (202; Fig.2, 0047; Pg.4)

As per claims 6, 19 Sakayori disclose:

The mobile wireless communications device of claims 1 and 16 respectively, further comprising a text-to-speech module for cooperating with said controller to convert the at least one text message to the at least one audio message. (0214-0215; Pg.14)

As per claim 7 Sakayori disclose:

The mobile wireless communications device of claim 1 further comprising a display connected to said controller for displaying the text messages. (201; Fig.2, 0047; Pg.4)

As per claim 9 Sakayori disclose:

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A communications system comprising at least one mobile wireless communications device (Abstract) comprising

A wireless transceiver and a controller for cooperating therewith for receiving text messages, (0041; Pg.3 and 0265; Pg.17) and

A headset output connected to said controller, (109; Fig.1, 0041; Pg.3)

Said controller for switching between a normal message mode and an audio message mode based upon a connection between said headset output and a headset, and when in the audio message mode, outputting at least one audio message comprising speech generated from at least one of the received text messages via said headset output; (0022; Pg.2, 0214-0215; Pg.14) and

A wireless communications network for sending the text messages to said at least one mobile wireless communications device. (0041; Pg.3 and 0265; Pg.17)

As per claim 10 Sakayori disclose:

The communications system of claim 9 wherein said headset output comprises a wireless headset output for establishing a wireless connection with the headset. (109; Fig.1, 0041; Pg.3)

As per claim 11 Sakayori disclose:

The communications system of claim 9 wherein said at least one wireless communications device further comprises a user interface device, and wherein said controller switches to the audio message mode based upon an audio message mode command provided by a user via said user interface device. (0214-0215; Pg.14)

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As per claim 12 Sakayori disclose:

The communications system of claim 9 wherein said at least one wireless communications device further comprises a text-to-speech module for cooperating with said controller to convert the at least one text message to the at least one audio message. (0022; Pg.2, 0214-0215; Pg.14)

As per claim 13 Sakayori disclose:

The communications system of claim 9 wherein said controller is also for generating a conversion request for the at least one text message and cooperating with the wireless transceiver to forward the conversion request to said wireless communications network; and wherein said wireless communications network receives the conversion request and further comprises a text-to-speech module for converting the at least one text message to the at least one audio message, and wherein said wireless communications network sends the at least one audio message to said at least one wireless communications device. (0214-0215; Pg.14)

As per claim 14 Sakayori disclose:

The communications system of claim 9 wherein said at least one mobile wireless communications device further comprises a display connected to said controller for displaying the text messages. (201; Fig.2, 0047; Pg.4)

As per claim 20 Sakayori disclose:

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A computer-readable medium (0297; Pg.19) for use with a mobile wireless communications device comprising a headset output, the computer-readable medium having computer-executable instructions for causing the mobile wireless communications device (Abstract) to perform steps comprising:

receiving text messages from a wireless communications network; switching between a normal message mode and an audio message mode based upon a connection between the headset output and a headset; (0214-0215; Pg.14) and

when in the audio message mode, outputting at least one audio message comprising speech generated from at least one received text message via the headset output. (0022; Pg.2, 0214-0215; Pg.14)

As per claim 21 Sakayori disclose:

The computer-readable medium of claim 20 wherein the headset output comprises a wireless headset output for establishing a wireless connection with the headset. (109; Fig.1, 0041; Pg.3)

As per claim 22 Sakayori disclose:

The computer-readable medium of claim 20 wherein the mobile wireless communications device further comprises a user interface device connected to the controller; and further comprising computer-executable instructions for causing the mobile wireless communications device to perform a step comprising switching to the audio message mode based upon an audio message mode command provided by a user via the user interface device. (0214-0215; Pg.14)

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As per claim 23 Sakayori disclose:

The computer-readable medium of claim 20 further comprising computer-executable instructions for causing the mobile wireless communications device to perform a step of converting the at least one text message to the at least one audio message prior to outputting.

(0214-0215; Pg.14)

Claim Rejections - 35 USC § 103

V. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

VI. Claims 8 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakayori in view of Nelson [US 6823184].

As per claim 8, Sakayori teaches all the particulars of the claim except a cellular transceiver. However, Nelson teaches in an analogous art, that the mobile wireless communications device of claim 1 wherein said wireless transceiver comprises a cellular transceiver. (Col.5; 7-17 and Col.6; 65-67) Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to include a cellular transceiver in order to provide a personal digital assistant for providing a conversation utterance to a remote listener in a wireless communication system.

As per claim 15, Sakayori teaches all the particulars of the claim except a cellular transceiver. However, Nelson teaches in an analogous art, that the mobile wireless communications device of claim 9 wherein said wireless transceiver comprises a cellular transceiver. (Col.5; 7-17 and Col.6; 65-67) Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to include a cellular transceiver in order to provide a personal digital assistant for providing a conversation utterance to a remote listener in a wireless communication system.

Conclusion

VII. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharad Rampuria whose telephone number is (571) 272-7870. The examiner can normally be reached on M-F. (8:15-4:45).


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on (571) 272-7495. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or EBC@uspto.gov.

Sharad Rampuria
Examiner
Art Unit 2683

October 21, 2005


GEORGE ENG
PRIMARY EXAMINER